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Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Notice of Ex Parte Communication
WC Docket No. 16-143, WC Docket No. 05-25, GN Docket No. 13-5, RM-10593**

Dear Ms. Dortch:



On behalf of Access Point Inc.; Birch Communications Inc.; Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications; New Horizon Communications Corp.; and Xchange Telecom LLC (collectively, "The Wholesale Voice Line Coalition" or "Coalition"), the undersigned of Morgan Lewis met separately on April 6, 2017 with Dr. Jay Schwarz, Acting Wireline Advisor to Chairman Ajit Pai; Amy Bender, Wireline Legal Advisor to Commissioner Michael O'Rielly; and Claude Aiken, Wireline Legal Advisor to Commissioner Mignon Clyburn, to discuss aspects of the Business Data Services Draft Report and Order included on the Chairman's tentative agenda for the April 20, 2017 open meeting.¹

Mordy Gross, Senior Vice President of Legal and Finance of Xchange Telecom, LLC, and Joseph Farano, General Counsel of Metropolitan Telecommunications, participated by phone in the meetings with Mr. Aiken and Ms. Bender. Mr. Farano also participated by phone in the meeting with Dr. Schwarz.

¹ *Business Data Services in an Internet Protocol Environment, Technology Transitions, Special Access for Price Cap Local Exchange Carriers, AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Draft Report and Order, WC Docket No. 16-143, GN Docket No. 13-5, WC Docket No. 0525, FCC-CIR1704-04 (rel. Mar. 30, 2016) ("Draft BDS Order").

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The Coalition discussed the proposal in the Draft BDS Order to sunset the “reasonably comparable” rule the Commission adopted in the *Technology Transitions Order*, which required ILECs discontinuing or reducing TDM-based wholesale platform services to provide “competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms and conditions.”² As the Coalition noted in its March 29, 2017 *ex parte* filing,³ the Commission should adopt a reasonable transition period before sunsetting this regulatory backstop in order to prevent market disruption and harm to consumers. The Coalition proposed a 2-year transition as consistent with the Commission’s longstanding goals of protecting competition and promoting innovation. Furthermore, there is substantial bipartisan precedent in favor of including transition periods for changes to existing regulatory regimes to avoid market disruption.⁴

² *Technology Transitions et al.*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, 30 FCC Rcd. 9372, 9443-44 ¶ 132 (2015) (“*Technology Transitions Order*”).

³ *Ex Parte* Letter from the Wholesale Voice Line Coalition to the Honorable Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-143 et al. (filed Mar. 29, 2017)

⁴ See, e.g., *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82, FCC 16-63 (May 26, 2016) (Statement of Commissioner Ajit Pai) (Commissioner Pai noting that both he and Commissioner O’Rielly urged the Commission to include a more reasonable transition period); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 15-136 (Nov. 5, 2015) (Dissenting Statement of Commissioner Ajit Pai) (criticizing the Order’s transition period of 90 days as being too short and contrary to precedent); *Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service*, WT Docket No. 12-40, FCC 17-27 (Mar. 24, 2017) (establishing a 7-year transition period to provide a “reasonable amount of time” for necessary industry parties to discuss safe coexistence in the 800 MHz band); *Improving Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 15-285, FCC 16-103 (Aug. 5, 2016) (establishing a 2-5 year transition period for handset manufacturers and services providers to adjust their portfolios); *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket 12-354, FCC 15-47 (Apr. 21, 2015) (establishing a 5-year transition period that gives incumbent licensees to “sufficient time to decide whether to seek a new license under a modified regime or look for other alternatives that may be available at that time”); *Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-328 et al., FCC 14-153 (Oct. 21, 2014) (finding that a transition period was “necessary and appropriate” such that affected parties can make modifications to conform to the adopted rules); *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5GHz Band*, ET Docket No. 13-49, FCC 14-30 (Apr. 1, 2014) (imposing a 1-2 year transition period); *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, CS Docket 98-120, FCC 12-59 (Jun. 12, 2012) (imposing a six-month transition period intended to “minimize the impact that sunset of [the] viewability rule may have on consumer and must-carry stations.”).

The Coalition explained that the Draft BDS Order is internally inconsistent. In proposing to immediately sunset the reasonably comparable platform rule, the Draft BDS Order states as its purpose to promote “encourag[e] the innovation and investment that come from facilities-based competition.”⁵ Yet the Draft BDS Order also acknowledges, and fails to reconcile, the well-documented challenges to facilities deployment, recognizing that carriers will not invest in new facilities unless they can recover the incremental cost of extending their network.⁶ Thus, the Draft BDS Order concludes that CLECs are generally unwilling to extend legacy TDM networks beyond half a mile to provide DS1 and DS3.⁷ In other words, the Draft BDS Order recognizes that competitors cannot economically deploy new facilities to meet a DS3 level of demand and its associated revenue while simultaneously concluding that eliminating the platform rule would create incentives for them to deploy such facilities to serve a handful of voice lines, where the revenue opportunities are exponentially lower.

The Draft BDS Order does not refer to any countervailing evidence that alternative facilities deployment is economically feasible. Instead, the draft cites only to CenturyLink’s claim that CLECs can “offer their own interconnected VoIP services to any customer with a broadband connection.”⁸ Yet this assertion ignores two critical realities. First, many CLEC customers – in particular financial institutions that conduct point of sale transactions – are unwilling to replace their TDM voice lines with over the top interconnected VoIP due to the sensitive data transported over such lines. Others may actually be prohibited by state or local regulations from doing so: for example, some CLECs use platform services to provide alarm and elevator lines, which are often prohibited by law from traversing the public Internet. Second, even if platform customers could be served using interconnected VoIP, such a change still requires a reliable broadband connection. And as explained above, and in prior advocacy that broadband connection is inevitable only available from the ILEC.

The Coalition and other CLECs using the platform to serve customers have provided extensive analysis of the impact premature sunset of the reasonably comparable platform rule would have on those customers. The vast majority of these customers are being served at locations that currently have no facilities-based alternative to the ILEC and are unlikely prospects for competitive deployment. As Granite Telecommunications, LLC, submitted in an FCC filing, 75% of its locations have 4 lines or less and 57% have only 1-

⁵ Draft BDS Order at ¶ 276.

⁶ *Id.* at ¶ 117.

⁷ *Id.* at ¶ 86.

⁸ Draft BDS Order at n.670; Reply Comments of CenturyLink, GN Docket No. 13-5 et al. (filed Nov. 24, 2015) at 12.

2 lines.⁹ Meanwhile, 30% of the wire centers where Granite serves customers using the platform have less than 5 lines, and 51% with 20 or less.¹⁰ The revenue opportunities and lack of density indicate that no competitive deployment is on the horizon, and that UNE-L is not a viable alternative given the lack of revenue opportunity to justify the investment in collocation.

CLECs that use the platform have further provided substantial evidence that significant customer harm would occur from premature sunset of the reasonably comparable platform rule. Hundreds of customers served by CLECs using the platform explained the harms they would incur if the Commission ended the rule prematurely.¹¹ These companies, including Starbucks, Sears Holding Company, and Bed Bath & Beyond, who collectively conduct business at over 60,000 locations in all fifty states, urged the Commission to preserve competition and to deny ILEC efforts to “re-monopolize the telecommunications market” where ILECs are frequently the only viable “last mile” network connection.¹²

As the Coalition has previously explained, a reasonable transition period is essential to allow CLECs and ILECs to negotiate terms of access to IP-based alternatives to the platform in order to avoid service disruption. A reasonable transition period is also supported by the record: for example, Verizon recently met advisors to the Commissioners to “emphasiz[e] the need for a suitable transition period to allow companies to adjust to the proposed detariffing actions and for preserving existing contracts.”¹³ Furthermore, the Commission has a long history, under both Republican and Democrat leadership, of promoting gradual and orderly transitions to avoid service disruptions and protect customers.¹⁴ A reasonable transition period is warranted here, and the Coalition urges the Commission to adopt a two year transition period before sunseting CLECs’ reasonably comparable access to the platform.

⁹ *Ex Parte* Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 et al., Attachment at 4 (filed June 3, 2015); *see also* Draft BDS Order at n.669.

¹⁰ *Id.*

¹¹ *Ex Parte* Letter from Michael B. Galvin, Counsel for Granite Telecommunications, LLC to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 et al., Attachment (filed June 23, 2015).

¹² *Id.*

¹³ *Ex Parte* Letter from Maggie McCreedy, Vice President, Federal Regulatory and Legal Affairs, for Verizon to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 et al. (filed April 6, 2017).

¹⁴ *See* note 4, *supra*.

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Sincerely,

/s/ Joshua M. Bobeck

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*Counsel for the Wholesale Voice Line
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cc: (Via E-Mail)
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